

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JANIE E. COLEMAN**  
Claimant

VS.

**SUSAN B. ALLEN MEMORIAL HOSP.**  
Respondent

AND

**SECURITY INS. CO. OF HARTFORD**  
**LIBERTY MUTUAL INSURANCE CO.**  
Insurance Carriers

Docket Nos. **5,011,072 &  
1,024,284**

**ORDER**

Respondent and its insurance carrier, Security Insurance Co. of Hartford, request review of the April 20, 2007 Award by Administrative Law Judge Nelsonna Potts Barnes. The Board heard oral argument on July 25, 2007.

**APPEARANCES**

Dale V. Slape of Wichita, Kansas, appeared for the claimant. Timothy J. Piatchek of Lenexa, Kansas, appeared for respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

The claimant alleged injury on June 2, 2003, (Docket No. 5,011,072) and the parties resolved this claim at a settlement hearing on July 8, 2004. The settlement was based upon a 5 percent whole person functional impairment. That was the rating provided by Dr. Michael Kyles for claimant's cervical spine injury. It was further provided that claimant reserved the right to future medical as well as review and modification.

Claimant continued working for respondent and on July 22, 2005, filed an application for hearing (Docket No. 1,024,284) alleging a new series of injuries to her bilateral upper extremities, left ankle and neck commencing in April 2005 and each and every day worked through her last day worked on July 19, 2005. On October 19, 2005, the claimant filed an application for review and modification in Docket No. 5,011,072. The two proceedings were consolidated for trial and award.

In Docket No. 5,011,072 the Administrative Law Judge (ALJ) concluded claimant made a good faith effort to find appropriate employment after she was terminated from her employment with respondent. The ALJ awarded claimant a 50 percent work disability based upon a 100 percent wage loss and 0 percent task loss from July 19, 2005 through December 31, 2005; a 20.5 percent work disability from January 1, 2006 through August 30, 2006; and, a 50 percent work disability after August 31, 2006.

In Docket No. 1,024,284 the ALJ determined claimant suffered two separate scheduled disabilities to her right and left upper extremities. The parties entered into a lump sum redemption in full and final settlement of this award on May 15, 2007.

The respondent requests review of whether claimant is entitled to a work disability regarding Docket No. 5,011,072. Respondent argues that after her June 2, 2003 injury the claimant continued to work performing the same job duties and had no restrictions. She then sustained a new and/or aggravating injury entitling her to benefits in Docket No. 1,024,284 due to her repetitive work activities and as a result received permanent restrictions. As a result respondent argues claimant has failed to meet her burden of proof that she suffers a work disability as a result of her June 2, 2003 injury. Moreover, respondent argues claimant was terminated for cause unrelated to her injury and did not exhibit a good faith effort to retain employment. Consequently, respondent argues the Board should impute the wage claimant was earning when terminated and deny her additional compensation.

Claimant argues the ALJ's Review & Modification Award should be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

As previously noted, Docket Nos. 5,011,072 and 1,024,284 were consolidated. The ALJ's Award addressed both docket numbers and the respondent requested review of both docket numbers. However, after the application for review was filed the claimant entered into a lump sum redemption in full and final settlement of the award in Docket No. 1,024,284. Consequently, the application for review in Docket No. 1,024,284 is dismissed.

This claim for review and modification in Docket No. 5,011,072 was consolidated with claimant's claim for additional injuries that occurred as she continued performing her job as a medical transcriptionist for respondent. And the evidentiary record primarily addresses the claimant's injuries suffered after she had settled the instant claim, from April 2005 through her last day worked. Consequently, it is difficult to separate these claims and to determine the nature of claimant's complaints and treatment for only the June 2, 2003 accident.

The medical reports of the testifying physicians provide some information they gleaned from their review of the claimant's medical records. It appears that during the course of her employment claimant began complaining of bilateral upper extremity pain and while receiving treatment for those complaints also complained of neck pain. In July 2003 she was referred to Dr. Kyle with complaints of neck pain and she received conservative treatment consisting of medications, physical therapy and a tens unit. On March 17, 2004, Dr. Kyle rated claimant at 5 percent for her cervical injury.

The claimant continued working for respondent and was not provided any restrictions as a result of the cervical injury. After the claim for her neck injury was settled she returned to the same job and experienced further problems which she described as primarily constant pain, numbness and tingling in her forearms. Claimant noted this occurred in April 2005 when her workload increased. Claimant further testified that her condition worsened as she continued to work through her last day worked on July 19, 2005 when her employment with respondent was terminated. And claimant testified that her bilateral upper extremity complaints were not as bad in 2004 as after 2005. Claimant further testified that although she was having problems with her neck, hands and arms when she settled her claim for the neck and she continues to have pain in those areas, nonetheless, her pain now is not the same as it was when she settled her case.

After claimant settled this claim for her cervical spine injury she returned to work without restrictions. As the ALJ noted in her Award, the claimant conceded she was released and returned to work without restrictions. Although claimant further concedes she has no task loss in this case she nonetheless argues that when she was later terminated from her job this change in her employment status entitles her to a work disability. The flaw in the ALJ and claimant's analysis is the fact that after claimant settled the instant claim she returned to work without restrictions.

Absent restrictions for the work-related injury, there is no work disability. An award of work disability compensates an injured worker for the loss of earning power because of the reduced ability to access the open labor market. In this case the claimant's loss of ability to access the open labor market is the result of restrictions imposed as a result of her subsequent work-related injuries.<sup>1</sup> The claimant has not met her burden of proof that

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<sup>1</sup> See *Edwards v. Boeing Co.*, 37 Kan. App. 2d 469, 154 P.3d 532 (2007).

her neck injury in 2003, which based on this record did not result in any permanent physical restrictions, has in any way affected her employability and accordingly she is not entitled to a work disability.

The ALJ's Award is reversed. Claimant is denied a work disability and is limited to her percentage of functional impairment as agreed upon and determined in the settlement of this claim.

**AWARD**

**WHEREFORE**, it is the decision of the Board that the Award of Administrative Law Judge Nelsonna Potts Barnes in Docket No. 5,011,072 dated April 20, 2007, is reversed and claimant is denied additional compensation for a work disability. The respondent's request for review in Docket No. 1,024,284 is dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of September 2007.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Dale V. Slape, Attorney for Claimant  
Timothy J. Piatchek, Attorney for Respondent and its Insurance Carrier  
John R. Emerson, Attorney for Liberty Mutual Ins. Co.  
Nelsonna Potts Barnes, Administrative Law Judge